



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 03-3155

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**DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF
LEVEL 3 COMMUNICATIONS, LLC BY CENTURYTEL FIBER COMPANY III, LLC
D/B/A LIGHTCORE**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-209

On September 12, 2003, Level 3 Communications, LLC (Level 3) and CenturyTel Fiber Company II, LLC d/b/a LightCore (LightCore), a CenturyTel, Inc. (CenturyTel) company (collectively Applicants), filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ for consent to transfer from Level 3 to LightCore a regional, long-haul, wholesale telecommunications network used to provide facilities-based fiber optic communications services in Arkansas, Illinois, and Missouri (the Network) and the associated customer base.

Applicants assert that the proposed transaction is eligible for streamlined treatment under section 63.03 of the Commission rules because the Network is being acquired by LightCore, a non-dominant carrier that provides competitive telecommunications services and will offer competitive services over the Network upon acquisition. Applicants argue that although LightCore is affiliated with CenturyTel, an incumbent local exchange carrier (LEC), the arms-length relationship between LightCore and CenturyTel, the variance in services to be provided by LightCore and CenturyTel, and the existence of other facilities-based competitors in the wholesale transport market served by the Network demonstrate that this proposed transaction does not pose potential for competitive harm. However, because the proposed transaction involves the purchase of in-region telecom facilities by an affiliate of an incumbent LEC, this application is not appropriate for streamlined treatment.²

Level 3, a Delaware limited liability company, is headquartered in Broomfield, Colorado

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² *See, e.g.*, 47 C.F.R. § 63.03(b)(2)(ii); Domestic Section 214 Application Filed for Acquisition of Assets of Digital Teleport, Inc. by CenturyTel Fiber Company II, LLC, WC Docket No. 03-99, *Public Notice*, DA 03-1289 (WCB Apr. 25, 2003).

and is engaged in the provision of domestic and international communications and information services. Level 3 is an indirect, wholly-owned subsidiary of Level 3 Communications, Inc., a global communications and information services company that offers a wide range of communications services over its 20,000 mile broadband fiber optic network, including Internet Protocol services, broadband transport, collocation services, and soft switch-based managed modem and voice services.

LightCore is authorized to provide local exchange and/or interexchange telecommunications services in Arkansas, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Nebraska, Oklahoma, Tennessee, and Texas. LightCore acquired the core domestic telecommunications assets of Digital Teleport, Inc. (DTI), including the equipment, fiber routes and customers of DTI. Using these assets, LightCore provides wholesale fiber optic services to national and regional communications carriers in small-to-mid-size city markets and to enterprise customers and government agencies in St. Louis, Missouri. LightCore's fiber optic network spans 5,700 total route miles, of which 3,200 are lit in portions of Missouri, Arkansas, Illinois, Kansas, Texas, Oklahoma and Tennessee. Approximately 64 percent of the lit network is in Missouri.

CenturyTel, which owns 100 percent of LightCore, is organized under the laws of Louisiana with its principal business office in Monroe, Louisiana. CenturyTel and its subsidiaries provide communications services including local, long distance, Internet access and data services to more than 3 million customers in 22 states. By the end of 2002, CenturyTel had nearly 2,415,000 access lines in service and was providing long distance service to almost 650,000 subscribers.

Pursuant to an Asset Purchase Agreement signed on July 24, 2003, LightCore has agreed to purchase from Level 3 the Network (formerly known as the Midwest Fiber Network) and its associated customer base.³ The Network consists of approximately 1,470 route miles of fiber and associated network equipment located in portions of Arkansas, Illinois, and Missouri. Level 3 uses the Network to provide wholesale transport services to various telecommunications carriers and Internet service providers, including affiliates of AT&T, Citizens, Earthlink, MCI, McLeodUSA, Socket Internet Services Corp., Sprint, and Verizon. Affiliates of LightCore—CenturyTel of Missouri LLC, CenturyTel of Northwest Arkansas, LLC and Spectra Communications Group, LLC—also lease circuits on the Network from Level 3 to provide interoffice transport services.

Although Applicants acknowledge that in Arkansas and Missouri the Network will

³ Applicants state that the Network assets being purchased as part of this proposed transaction were constructed by Contel between 1984 and 1993 to support interoffice services. Following the Contel-GTE merger, GTE integrated the Network into GTE Internetworking, Inc., which ultimately became known as Genuity. As a condition of the GTE-Bell Atlantic merger in 2000, GTE spun off Genuity through an initial public offering. Level 3 acquired the Network in February 2003, as part of its acquisition of substantially all of Genuity's telecommunications assets.

overlap CenturyTel's facilities, they contend that the proposed transaction will not harm competition. Specifically, Applicants state that in the Network's service areas, a number of telecommunications companies (e.g., AT&T, Sprint, MCI, and McLeod USA) provide competing wholesale transport services.⁴ Applicants state that not only will CenturyTel and LightCore conduct business at arms-length, they will also be using the Network for different purposes, thereby minimizing anti-competitive concerns regarding the use of these facilities. Applicants assert that approximately 33 percent of the Network's revenue comes from non-affiliated carriers, and therefore, LightCore has an incentive to continue providing its wholesale services to non-affiliated companies. Applicants further state that although CenturyTel is an incumbent LEC, it is significantly smaller than the large regional Bell operating companies, with slightly less than one person of the nation's subscriber lines.⁵

Applicants assert that the proposed transaction is in the public interest because LightCore's acquisition of the Network and its associated customer base will strengthen and expand its customer service offerings and networks in the Midwest and allow it to compete more effectively. Applicants state that prior to its purchase by Level 3, the Network had been underutilized due to a lack of investment in maintenance and upgrades during Genuity's bankruptcy. Applicants maintain that LightCore is primed to make the necessary improvements and upgrades to the Network to optimize use of the Network and increase its capacity to the benefit of LightCore's customers, and ultimately, end-users. Applicants state that the increased capacity will permit carriers to provide a broader range of advanced services to their end-users, and that LightCore intends to continue providing services to its current customers under the same terms and conditions as provided by Level 3. Thus, Applicants submit that the proposed transaction will be transparent to existing carrier customers in terms of the services they receive, including the rates, terms and conditions of any customer contracts.

GENERAL INFORMATION

The acquisition of assets identified herein has been found, upon initial review, to be acceptable for filing as a non-streamlined application. The Commission reserves the right to return any acquisition of assets application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days** and **reply comments within 21 days** of this notice.⁶ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

⁴ Applicants state that while some of these competitors may use a portion of the Network to connect discrete portions of their own transport network, these competitors each have their own network facilities over which they provide competing transport service within the services areas of the Network.

⁵ *See Trends in Telephone Service*, Table 7.3, August 2003.

⁶ *See* 47 C.F.R. § 63.03(a).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893;
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov;
- (3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: dcjohnso@fcc.gov;
- (4) William Dever, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: william.dever@fcc.gov;
- (5) Christopher Killion, Office of General Counsel, 445 12th Street, S.W., Room 8-C740,

Washington, D.C. 20554; e-mail: ckillion@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson, at (202) 418-1394, or Dennis Johnson at (202) 418-0809.

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